

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SCOTT PAYNE,

Plaintiff,

v.

CAROLYN W COLVIN, Acting
Commissioner of Social Security,

Defendant.

CASE NO. C15-0945RSM

ORDER ADOPTING REPORT AND
RECOMMENDATION

The Court, having reviewed Plaintiff's Complaint, the Report and Recommendation ("R&R") of Judge David W. Christel, United States Magistrate Judge, the Objections to the R&R, Plaintiff's response to those Objections, and the remaining record, does hereby find and ORDER:

1. The Court ADOPTS the R&R. The Commissioner has objected to the R&R, arguing that it is in error because the decision from which Plaintiff appeals was not a "final decision of the Commissioner," and was not "made after a hearing," and therefore is not subject to judicial review. Dkt. #27. The Court disagrees. As Plaintiff responds, the Commissioner has misconstrued Plaintiff's appeal and Judge Cristel's decision. Plaintiff acknowledges that he cannot reopen the Commissioner's prior final decision; instead, he argues that res judicata does not bar an adjudication of his present

1 applications due to the existence of new and material evidence pertaining to the
2 previously-adjudicated period. The legal authority presented in the Objections does
3 not address that issue. Moreover, the Commissioner has failed to address the legal
4 basis of Judge Cristel's decision – namely, Social Security Ruling 68-12a – or the
5 legal authority upon which he relies. Accordingly, the Undersigned agrees that the
6 ALJ erred in her decision as described in the R&R.

7 2. This matter is REVERSED and REMANDED for further administrative proceedings.

8 DATED this 19th day of April, 2016.

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11 RICARDO S. MARTINEZ
12 CHIEF UNITED STATES DISTRICT JUDGE
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